SENATE....No. 51.

Commonwealth of Massachusetts.

10862

In Senate, March 24, 1851.

The Joint Special Committee, to which was referred so much of the Governor's Address as relates to the subject of Slavery, and to which was also referred numerous petitions from the inhabitants of the State, praying the Legislature to instruct their Senators and to request the Representatives in Congress to use their endeavors to procure a repeal of the "Fugitive Slave Law;" and also numerous other petitions praying the Legislature to provide further safe-guards to protect the citizens in the enjoyment of their natural rights, submit the following

REPORT.

In his inaugural address, the Governor remarks that, "in ordinary times" we "should omit the discussion of topics which are national in their character; but the excitement which has sprung from the institution of slavery, and the examination of questions connected with it, seem to justify some deviation from this general policy." After alluding to the fact, that where slavery "exists it is regarded as a benefit, where it does not exist it is regarded as an evil;" that "one portion of the country has a pecuniary interest in its existence, equal to many hundred millions of dollars," and that "the other regards it as a moral, political, social and industrial evil, which dishonors labor and degrades the laborer within the sphere of its influ-

ence," his Excellency proceeds to say, "It may not then be inappropriate to consider how far the institution of slavery is a general subject of legislation, and therefore of general political interest, and how far its existence and responsibility are local, and the subjects of local legislation only."

Again, his Excellency remarks, "A remedy for its *injustice* or *inexpediency* must be sought in the legislative department of the government." And yet again. "The provision of the Constitution on which this law [the act of September 18, 1850,] is based, can never be properly construed, either by Congress or the courts, to endanger the liberties of free citizens." The committee are not quite sure that they understand the full import of the sentence last quoted, but taken in connection with a declaration on the same page, to wit, "I cannot advise the passage of any measure calculated to increase the excitement which unhappily exists, *even though that excitement have no just foundation*," we are led to the conclusion that his Excellency does not participate in any fear that the acts of Congress involve any consequences dangerous to the freedom of the people.

But the committee have no desire to go into a critical examination of the propositions, inferences or suggestions, contained in that part of the address committed to them for consideration. They prefer to examine the subject of slavery in the abstract, and make such an application of their conclusions as they deem pertinent and undeniable. They have endeavored to embody their views in as small a compass as seemed to be consistent with the magnitude of a subject which agitates the whole Commonwealth; and though they cannot indulge an expectation that all their remarks and suggestions will meet an unanimous response from the Legislature, they yet feel a cheerful confidence in the belief that they will receive credit for uprightness of purpose, and an honest intention to perform, to the best of their ability, a duty, the execution of which they would willingly have declined.

All men owe absolute allegiance to the law of God, which is, in its nature, a universal rule of conduct for mankind, laid down by Him. It belongs to the nature of man and the nature of God, and derives its sanction and validity therefrom. It is,

accordingly, the *higher law*, and so the standard of all other laws. Its design is to promote the welfare of all mankind in general, and of each man in particular.

Human law is, in its nature, a special rule of conduct for the people by whom it is enacted, and derives its origin and acquires its sanction solely from the consent of that people who are to be governed thereby. The just design of human law is, in general, to promote the welfare of the nation for which it is made, the welfare of all and also of each. Its design, therefore is, in special, two fold, namely, its first and primary design is to protect the *person* in all his natural rights, with all that pertains to those rights; the next and secondary design is, to protect his *property* with all that rightly pertains thereto. These two objects comprise all the functions of human law; for the protection of the substance of manhood and the attributes thereof, of person and property, necessarily involves the protection of the right to develop both.

In regard to the law of God, things may be distributed into three classes, namely:—first, such as are absolutely right; second, such as are absolutely wrong; and third, such as are neither absolutely right nor absolutely wrong, but morally indifferent. It is moral to do the first, immoral to do the second; to do the third is neither directly moral nor immoral, but only expedient or inexpedient.

It is plain that human law cannot alter the natural relations of things, nor make right wrong, or wrong right, or things indifferent either right or wrong. Laws, therefore, are only declaratory of the intentions of the law makers, who therein lay down a practical rule of conduct, but can no more alter right and wrong than the mariner can alter the position of the stars by which he steers his vessel. Of course, then, as it is the natural duty of man to do the right and avoid the wrong, it is plain that human law is, *morally*, valid and obligatory only so far as it declares the right to be the rule of conduct, and is, *morally*, invalid and of no obligation, just so far as it declares the wrong to be the rule of conduct. Otherwise, allegiance to the state would transcend allegiance to God, and the statutes of men be superior to the eternal law of the infinite God,—a proposition, which is absurd in its substance, and impious in its form. But if the human statute represents the right, then it is

so far identical with the natural law of God, and is accordingly, valid and obligatory. Thus human laws derive all their moral validity and obligation from their conformity to the natural law of God; so natural right or justice, is, and ought to be, the ultimate standard-measure of all human laws in general, and to that standard all human laws are amenable.

The Constitution of the United States is, in its nature, a particular rule of conduct, to be observed in the governing of the people by their officers, legislative, judiciary and executive; accordingly, it is a conventional and secondary standard-measure of the laws made by the people. Accordingly, as it is a moral duty that all human laws be made conformable to the right,—else they are morally invalid and void by nature,—so it is a constitutional obligation to make the laws of the United States conformable to the Constitution, otherwise they are constitutionally invalid and void by agreement. Laws of the United States are therefore amenable to the Constitution.

The design of the Constitution is thus declared by the people of the United States in the preamble to that document, namely: "To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

These words, which thus state the design, seem to be the constitutional standard-measure of all other provisions of the Constitution itself; for the end aimed at is one thing, the means to obtain that end another. This design is identical with that of the law of God and of all just human law, only some of the particulars which belong to human welfare are distinctly specified in the preamble.

The Constitution then proceeds to lay down certain particular rules of conduct for the nation in organizing its ideas into institutions, and for administering those institutions. Some of these provisions or particular rules conform to the law of God, and to the *general* design of human laws and the *special* design of the Constitution. Some are inconsistent with all these. Your committee respectfully set forth that they are decided in their conviction, that the institution of slavery, as it existed in the confederated colonies at the adoption of the Constitution, and has ever since unhappily continued to survive, is utterly incon-

sistent with the natural law of God, with the general design of all just human laws, and with the special design of the Constitution as set forth in the preamble thereto, as it is notorious that this institution is, and has ever been, inconsistent with the express words of the Declaration of Independence. But though the committee have no hesitation in declaring their conviction that the provisions in the Constitution, sustaining slavery, directly conflict with the natural duty which men owe to their fellow men, and with the natural allegiance which all men owe to the Divine law, yet they do not forget their obligations to the Constitution, and their allegiance to their country and the government which it has established. If these provisions sustaining slavery be complied with, and the compliance be enforced by penal laws, it should be distinctly stated that the compliance is rendered, not because it is *morally right*, but because it is *technically legal*; nay, technically legal while it was absolutely wrong, and contrary to the avowed design of the Constitution as set forth in the preamble. And though the citizen may, by the conventional rules of society, be excused for obedience to unjust laws; though individuals may believe it patriotic to assist in carrying into effect such laws, yet those who *enact* them and enforce a compliance by penalties from which no citizen who violates them can hope to escape, and those also who volunteer in the execution of them, will hardly be acquitted before that Tribunal, which ultimately deals out retribution according to the law which every intelligent man feels to be divine, irrevocable and eternal.

In obedience to what the committee supposed to be expected or demanded of them, by the order referring to their consideration so much of the Governor's Address as relates to slavery, they could do no less than state these general conclusions; but of that matter they have nothing further to say, and so they betake themselves to the consideration of some particular provisions of the Constitution.

The Constitution provides,

I. That "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." [*Amendments, Art.* iv.]

II. That "the privilege of the writ of *habeas corpus* shall

not be suspended, unless, when, in cases of rebellion or invasion, the public safety may require it. [*Art.* i. § 9, ¶ 2.]

III. 1. "The trial of all crimes, except in cases of impeachment, shall be by jury." [*Art.* iii. § 2, ¶ 3.]

2. "In suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." [*Amendments, Art.* vii.]

3. "No person shall be deprived of life, liberty or property, without due process of law." [*Amendments, Art.* v.]

IV. "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges both of the superior and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." [*Art.* iii. § 1.]

Your committee will now examine the Fugitive Slave Law, trying it by the several standards above referred to, both general and special.

The Fugitive Slave Law is, in its nature, a special rule of conduct, to be followed in reducing to slavery certain persons alleged to have fled from it, and for punishing such as aid them, in their escape. Its design is, primarily, to reduce men to slavery; that is, to remove them from the condition of MEN to the condition of mere CHATTELS; and, secondarily, to punish all such as aid them to remain in the condition of men, and hinder them from being forced into the condition of mere chattels.

Your committee cannot resist the conclusion that this law, in its nature and its design, is, in general, plainly hostile to the law of God, and to the design of all just human law. We regard the Fugitive Slave Law, therefore, as morally,—not legally, but morally,—invalid and void; and though binding on the conduct, no more binding on the conscience of any man than a law would be, which should command the people to enslave all the tall men or all the short men, and deliver them up on claims, to be held in bondage forever; for the committee can see no moral difference between enslaving a white man and a black one, or a fugitive and one always free.

But this law is also plainly at variance with the design of

the Constitution, as set forth in its own language before quoted. To us the whole statute appears unconstitutional, not merely technically and in its details, but unconstitutional universally and in the highest degree, as tending to defeat the purposes of the Constitution itself. On this point, however, we will not dwell.

But the committee regard the Fugitive Slave Law not only as unconstitutional *in general*, and with regard to its design, but *specially*, as compared with some of the provisions of the Constitution itself.

I. It subjects the people to "unreasonable searches and seizures," and thus violates their "right to be secure in their persons;" for any man may be arrested on the affidavit of any other man swearing that he is a slave, and be sent into bondage by the act of a single commissioner. We have already seen free men thus seized and hurried off to slavery.

II. It annuls and makes useless "the privilege of the writ of *habeas corpus*." We learn from the opinion of the attorney general that it does not do this *in form*, but it does it, substantially, and *in fact*.

III. It takes away "the right of the trial by jury" from the alleged fugitive, and that in a matter of the greatest importance, thus depriving him of liberty, which is of more value than property or life, "without due process of law." The fugitive is not tried for his liberty "by his peers or the law of the land," but before a single commissioner, who does not, like the jury, represent the "country," the people with their human sympathy towards men and their personal duty towards God; but who is a mere official agent of government, representing only the will of the men in power, whose creature he is, and at whose caprice he may be removed.

Then, too, as if this were not enough, the trial must be conducted in "a summary manner." [*Fugitive Slave Law*, § 6.] The committee will not undertake to point out what a "summary manner" *is*, but they submit that it is *not* "due process of law;" for, without repeating what they have before said, the trial of an issue so important is not necessarily a public one, but the commissioner may try the alleged fugitive in the cellar of his house and at midnight, allowing the miserable man no counsel to aid him, and with no witness but the slave

hunter and the officials and creatures of government. Even this is not all. For

IV. The commissioner is not a man vested by the Constitution, as cited above [*Art.* iii. § 1,] with "the judicial power of the United States;" he is not a "judge," holding office "during good behavior," but only a commissioner, removable at the pleasure of the men who appointed him. Nor is this all; but the law, not content with subjecting the alleged fugitive to "unreasonable seizure," with depriving him, substantially, of the benefit of "the privilege of the writ of *habeas corpus*," withholding "the right of trial by jury," by "due process of law," and before the "judicial power of the United States," goes further, and offers a bribe to the commissioner to decide against liberty and in favor of bondage. The act gives to the commissioner an incitement to decide against his victims, by offering him a "fee of ten dollars" if he enslaves his victim, and only "a fee of five dollars," if he decides the other way! To the committee this provision appears atrocious; it holds out a premium for legal wickedness. We are amazed that any one should deem it constitutional. It would be a parallel in legislation to provide that, in capital trials the judges should have a hundred dollars a piece for each man they should hang, and only fifty, when the man should be acquitted, and that the jury should also be paid twice as much for the men they found guilty as for those they found not guilty.

These are the chief constitutional objections, which the committee bring against the law; but beside these, we think it needlessly severe in other particulars against the alleged fugitive, and such as allow him the smallest shelter. It provides that if any one "shall aid, abet, or assist such a person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant," "he shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months," and "shall moreover forfeit and pay, by way of civil damages," "the sum of one thousand dollars for each fugitive so lost." [*Sec.* 7.] We are astonished at such penalties denounced against an act of mercy, which common humanity prompts, and religion commands.

But leaving these and all the previous objections to this law, the committee are of the opinion that Congress has no constitu-

tional power to legislate on this matter. The power of Congress to make this law, and the previous act of 1793, is claimed under the following provision of the Constitution:—"No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor is due." [*Art.* iv. § 2, ¶ 3.] We will refer to but a single ambiguity;—by whom shall he "be delivered up?" It must be, first, by the *people* acting jointly or severally; or secondly, by the *state* to which he has escaped; or, thirdly, by the *federal government.* The Supreme Court has decided in favor of the federal government; but the committee think that this function of delivering up constitutionally belongs to the individual states to which the fugitive may have escaped. The committee are happy to have on their side the opinion of so celebrated an "Expounder of the Constitution," as Mr. Webster, who says, in his speech of March 7, 1850,—"I always thought that the Constitution addressed itself to the legislatures of the states, or to the states themselves." "It seems to me that the import of the passage is, that the state itself shall cause him [the fugitive] to be delivered up."

The committee find the same opinion, in a report made by the committee on the Judiciary of the House of Representatives of Massachusetts, in 1837, which says,—"That no general authority upon the subject of slavery, or upon a subject which shall draw this after it as an incident, is any where given to the general government." [*House document*, 1837, No. 51, p. 15, &c.]

Considering this law as unjust in its nature, wrong in its principle, hostile to the designs of all just human laws, deeming it in the highest degree unconstitutional, in general and in detail, we do not hesitate to declare that we consider it an infamous and wicked statute, a law not fit to be made and not fit to be kept. It is a disgrace to the age we live in, a reproach to the nation which glories in the name of democracy, and a foul shame to the people that profess a religion, whose great practical rule of conduct is, "to do unto others as we wish them to do to us." Your committee lack time, as well as lan-

guage, to express the abhorrence and loathing which they feel for this law. Yet *it is a law of the land* not officially declared unconstitutional. Unconstitutional, as we believe it, inhuman and wicked, as it unquestionably is, *it is still a law*, and forcible resistance to it is a legal misdemeanor. Its results are most disastrous. The innocent citizens, who have fled from bondage, and found a home and reared families among us, are forced to flee, and to seek in a monarchy an asylum from the injustice and cruelty of a republic! They flee for liberty from America to England! A queen's diadem protects Christian men from the slave-driver's whip, tender women from a master's lust, and new-born babes from his thirst for gold. The slave-hunter profanes the soil of Massachusetts, seeking whom he may devour. His presence spreads terror among the colored people of our state. He is a hawk among doves,—a wolf, a hyena, among lambs. It is with deep mortification your committee confess that persons are found in this city, who consent to sell their professional services to the base purpose of enslaving men;—that among them are found persons whom this Commonwealth has honored with the commission of justice of the peace, men who trample under foot our own constitution, in their efforts to enforce this wicked law. We confess we deem it no less a crime against nature and humanity to enslave a fugitive than to steal a free man. To our judgment, the *illegal* kidnapper on the coast of Africa, and the *legal* man-hunter in Boston, belong to the same class of felons. They differ, however, *specifically*, and we think the native species far worse than the foreign felon, whom all Christian governments, and our own among the number, have denounced as a pirate. We say this advisedly. We have studied the action, have analyzed its motives, and have examined its excuse. But while we gladly fold the mantle of charity over the shame of men, whom poverty and ignorance conduct to crime, we can find no palliation for the hideous spectacle of citizens of Massachusetts, and even officers in her service, in the very city of the Pilgrims, seeking to enslave a man. Let us turn off our eyes from a spectacle so ghastly and disgraceful.

The committee deem it proper to recall to the memory of the Legislature, some of the resolves that have been passed by our predecessors.

On the 8th of April, 1839, the Legislature passed a resolve, declaring "that it is a paramount duty of Massachusetts to protect her citizens in the enjoyment and exercise of all the rights to which, by virtue of their citizenship they are entitled."

On the 23d of March, 1840, a preamble, setting forth the moral and social as well as the political, and national evils of slavery in the District of Columbia, and of the slave-trade between the several states, and the following resolutions, were adopted: —

Resolved, That Congress ought to exercise its acknowledged power in the immediate suppression of slavery and the slave trade in the District of Columbia. And whereas by the Constitution of the United States, Congress has the power to regulate commerce with foreign nations, and between the several states of the Union. And whereas a domestic slave-trade, as unjustifiable in principle as the African slave trade, and scarcely less cruel and inhuman in practice, is now carried on between the several states,—therefore

Resolved, That the domestic slave trade between the several states ought to be abolished by Congress, without delay.

Resolved, That no new state ought to be admitted into the Union, whose constitution shall tolerate domestic slavery.

February 27, 1847. *Resolved*, UNANIMOUSLY, That the Legislature of Massachusetts views the existence of human slavery within the limits of the United States as a great calamity, an immense moral and political evil, which ought to be abolished as soon as that end can be properly and constitutionally attained, and that its extension should be uniformly and earnestly opposed by all good and patriotic men throughout the Union.

February 27, 1849. *Resolved*, That slavery ought not to exist in the District of Columbia, and that it is the duty of Congress, to devise the most just, practicable and expeditious mode for abolishing the same.

On the first day of May, 1850, it was

Resolved, We hold it to be the duty of that body [*Congress*] to pass such laws in regard thereto [*the delivering up of fugitive slaves*] as will be sustained by the public sentiment of the free states where such laws are to be enforced, and which shall especially secure to all persons whose surrender may be claimed as having escaped from labor and service in other states, the right of having the validity of such claim, determined by a jury, in the state where such claim is made.

Resolved, That the people of Massachusetts, in the maintenance of these their well known and invariable principles, expect

that their officers and representatives will adhere to them at all times, on all occasions, and under all circumstances.

The committee have made careful inquiries as to what remedies for the present evils are in the power of the Legislature of Massachusetts and what means we have for protecting the rights of our citizens against invasion, by persons acting under the authority of the Fugitive Slave Law. In 1842, the Supreme Court of the United States, in the "Prigg case," declared that "Every state is perfectly competent, and has the exclusive right to prescribe the remedies in its own judicial tribunals, to limit the time as well as the mode of redress, and to deny jurisdiction over cases, *which its own policy and its own institutions either* PROHIBIT OR DISCOUNTENANCE." And again, the court in the same case, say; "the states cannot be compelled to enforce them [the provisions for the surrender of fugitives from labor;] and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the constitution." And again, the court say, alluding to the powers in the act of 1793, conferred upon state magistrates,—"As to the authority conferred upon state magistrates, while a difference of opinion has existed, and may exist still on the point in different states, whether state magistrates are bound to act under it; none is entertained by this court, that state magistrates may, if they choose, exercise that authority UNLESS PROHIBITED BY STATE LEGISLATION." (Prigg, Commonwealth of Pennsylvania, 16 Peters, R. 614, 615, 622.)

This decision not only frees the individual states from all action in the matter; but expressly recognizes the power of the states to prohibit all action by its officers under the acts of Congress. Accordingly, Massachusetts, soon after, in 1843, enacted the statute well known as the "Latimer law," and made it penal for any of her officers to aid in the capture or detention of any person claimed as a fugitive slave. The use of our jails for the detention of such fugitives, was also forbidden under severe penalties. But as that statute requires some slight modification, and as further legislation seems also desirable to meet the present emergency; and as the institution of slavery

is recommended as an appropriate subject for the consideration of the Legislature, by His Excellency the Governor, the committee recommend the enactment of the accompanying Bill, and the passage of the subjoined Preamble and Resolves.

For the Committee,

JOS. T. BUCKINGHAM, *Chairman.*

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-One.

RESOLVES

Concerning Slavery.

Resolved, That Massachusetts affirms anew her hostility to slavery and her devotion to the Union; that, inspired by these cherished sentiments, she longs for harmony among the different parts of our common country; but she cannot conceal the conviction that this can be finally and permanently secured only by the overthrow of slavery, so far as the same can be constitutionally done, everywhere within the jurisdiction of the national government; that the free states may be relieved from all responsibility therefor, so that freedom, instead of slavery, shall become national, and slavery, instead of freedom, become sectional.

Resolved, That Massachusetts protests against the Fugitive Slave Law as alien to the spirit of the Constitution, destructive of rights secured by that instrument, hostile to the sentiments of Christianity, and abhorrent to the feelings of the people of this Commonwealth; that such a law will naturally fail to secure that support in the heart and conscience of the community, without which, any law must sooner or later, become a dead letter.

Resolved, That his excellency the Governor be requested to transmit a copy of these resolves to each of our senators and representatives in Congress, to be by them laid before their respective houses.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-One.

AN ACT

In addition to "An Act further to protect Personal Liberty."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

SECT. 1. All the provisions of the "Act further to protect personal liberty," passed the twenty-fourth day of March, in the year one thousand eight hundred and forty-three, shall apply to the act of Congress, approved September eighteenth, in the year one thousand eight hundred and fifty, entitled, "An act to amend and supplementary to the act entitled an act respecting fugitives from justice, and persons escaping from the service of their masters."

SECT. 2. Any officer, or other member of the volunteer militia of the Commonwealth, who shall act in his capacity as such officer or member, or under color thereof, at the command or requisition of the

United States marshal, or of any deputy or special marshal of the United States, under pretence of being part of the *posse comitatus*, in the arrest and detention of any person claimed as a slave, shall be liable to the same penalties provided by the act to which this is in addition.

SECT. 3. Any corps of the volunteer militia of this Commonwealth, which, at such command or requisition, under such pretence and for such purpose, shall act in its organized capacity as such corps, shall forthwith be disbanded; and any officer of such corps joining in such action, shall be removed from his office, upon conviction thereof by a court martial.

SECT. 4. It shall be the duty of the district attorneys of the Commonwealth, within their respective district, whenever any inhabitant of the Commonwealth is arrested or claimed as a slave, on being informed thereof, diligently and faithfully to use all lawful means to protect, defend, and procure to be discharged, every such person so arrested or claimed: *provided*, the said services are not expressly declined by such person.

SECT. 5. If any person shall remove from the limits of this Commonwealth, or shall assist in removing therefrom, or shall come into the Commonwealth with the intention of removing, or of assisting in the removing therefrom, or shall procure, or assist in procuring to be so removed, any person living in the peace thereof, who is not "held to service and labor," and who has not "escaped from service and labor," within the meaning of those words in the Constitution of the United States, on the pretence that such person is so held and has so escaped,

he shall be punished by a fine not exceeding five thousand dollars, and by imprisonment in the State prison not more than ten years.

SECT. 6. Any person injured or endangered by any proceeding punishable by the preceding section, may maintain an action therefor, in any court competent to try the same.

SECT. 7. In every case, civil or criminal, arising under this act, the legal presumption shall be, that no person living within the peace of this Commonwealth is held to service or labor, and has escaped therefrom within the meaning of those words in the Constitution of the United States, and it shall be incumbent on any party that relies upon such holding and escape in his defence, to establish the same by evidence.

SECT. 8. Whenever any person is arrested or imprisoned on the ground of his being held to service or labor, the Supreme Court, or the Court of Common Pleas, at any regular session, or any justice of either of said courts, or any justice of the peace, may, on the petition of the person so arrested or imprisoned, or of any other person acting in his behalf, issue a writ of *habeas corpus* to take the body of the person so arrested or imprisoned in the manner and form provided in the one hundred and eleventh chapter of the Revised Statutes; and the writ, if issued by either of said courts, or any justice thereof, shall be made returnable before the court or justice issuing the same, or any other justice of the same court, at the discretion of the judge issuing the same; and if issued by any justice of the peace, shall be made returnable before the Supreme Judicial Court or the

Court of Common Pleas, or any justice of either of said courts named in the writ, at the discretion of the justice issuing the same. And the writ may be returnable to any term of either of said courts not expired when the writ issues, or at the next succeeding term in any county.

SECT. 9. In addition to the persons authorized by the said one hundred and eleventh chapter of the Revised Statutes to serve writs of *habeas corpus*, any constable of any city or town may, in said city or town, serve any writ of *habeas corpus* issued under this act.

SECT. 10. The whole of said one hundred and eleventh chapter shall apply to all proceedings under this act, unless they are inconsistent with any provisions of this act.

SECT. 11. Whenever the person arrested or imprisoned, on the ground of his being held to service or labor, shall not, on the hearing, be discharged by the judge or court before whom the writ is returned, he may claim a jury trial before the court of which the judge who heard the case is a member, on entering into a recognizance with a sufficient surety, or sureties, before said judge or court, for his appearance at the said court, at the next term thereof in the same county, and prosecuting his appeal to final judgment. The penalty of such recognizance shall in no case exceed one thousand dollars.

SECT. 12. The court to which the said appeal is made, shall direct a trial by jury of all questions in controversy, under the *habeas corpus*, between the person arrested or imprisoned and the claimant; and

the verdict of such jury shall be final and conclusive, and judgment shall be entered thereon; and the Commonwealth shall pay all the expenses of justice fees, serving the writ of *habeas corpus*, witnesses' fees, summoning witnesses, and clerk's fees, which may be incurred by any person obtaining a writ of *habeas corpus* under this act.

SECT. 13. This act shall take effect from and after its passage.